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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

LINCO CUSTOM PICTURE
FRAMING, INC.,

Plaintiff and Respondent,

v.

MARKETING FUNDAMENTAL
INCORPORATED et al.,

Defendants and Appellants.

B291306

(Los Angeles County
Super. Ct. No. BC529071)

APPEAL from a judgment of the Superior Court of Los Angeles County, Gregory Keosian, Judge. Reversed and remanded.

Joseph R. Cruse, Jr., for Defendants and Appellants.

Law Offices of Steven L. Martin and Steven L. Martin for
Plaintiff and Respondent.

I. INTRODUCTION

Defendants Marketing Fundamental Incorporated and Jing Y. Lai appeal from the trial court's entry of judgment in favor of plaintiff Linco Custom Picture Framing, Inc. Defendants contend that the trial court lacked jurisdiction to enter the judgment because it previously dismissed the action with prejudice and did not retain jurisdiction pursuant to Code of Civil Procedure¹ section 664.6. We agree with defendants and reverse.

II. BACKGROUND

On August 25, 2014, plaintiff filed a first amended complaint against defendants, alleging claims for intentional misrepresentation and making a promise without intending to perform it.

On November 13, 2017, plaintiff's counsel filed a notice of settlement, stating that "[t]he settlement agreement conditions dismissal of this matter on the satisfactory completion of specified terms A request for dismissal will be filed no later than . . . December 11, 2017." The settlement agreement provided that the parties "agree that the court shall retain jurisdiction in the Action . . . pursuant to Cal. Code Civ. Proc., Section 664.6, to enforce the terms of this Settlement Agreement. Pursuant to Evidence Code, sections 1119-23, the parties specifically agree that: . . . the court is to retain jurisdiction during the performance of the terms of this agreement; . . . and

¹ Further statutory references are to the Code of Civil Procedure.

the court, upon motion of either party, may enter judgment pursuant to the terms hereof.” (Italics removed.)

On January 12, 2018, plaintiff filed a request for dismissal of the entire action with prejudice. Plaintiff neither attached the terms of the settlement agreement to the request for dismissal nor requested that the trial court retain jurisdiction pursuant to section 664.6. That same date, the court clerk entered the requested dismissal.

When defendants allegedly failed to perform their obligations under the settlement agreement, plaintiff, on May 8, 2018, submitted an ex parte application for entry of judgment pursuant to stipulation.

On May 11, 2018, the trial court granted plaintiff’s application, ruling that “[t]he settlement agreement called for the Court to retain jurisdiction to enforce the settlement agreement. The Court therefore retains jurisdiction regardless of the dismissal.” That same date, the trial court entered judgment in favor of plaintiff and against defendants in the amount of \$33,333.32, with interest from May 10, 2018.

On July 11, 2018, defendants timely filed a notice of appeal.

III. DISCUSSION

Defendants contend that the trial court lacked jurisdiction to enter the judgment. We agree.

“Section 664.6 provides that, ‘[i]f parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested

by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.’ ‘Section 664.6 was enacted to provide a summary procedure for specifically enforcing a settlement contract without the need for a new lawsuit.’ (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 809)” (*Sayta v. Chu* (2017) 17 Cal.App.5th 960, 964.)

“Like section 664.6 motions themselves, requests for retention of jurisdiction must be made prior to a dismissal of the suit. Moreover, like the settlement agreement itself, the request must be made orally before the court or in a signed writing, and it must be made by the parties, not by their attorneys, spouses or other such agents. If, after a suit has been dismissed, a party brings a section 664.6 motion for a judgment on a settlement agreement but cannot present to the court a request for retention of jurisdiction that meets all of these requirements, then enforcement of the agreement must be left to a separate lawsuit.” (*Wackeen v. Malis* (2002) 97 Cal.App.4th 429, 433.) Even where, as here, the settlement agreement provides that the trial court will retain jurisdiction pursuant to section 664.6, if the parties fail to request that the trial court retain such jurisdiction and the plaintiff files a voluntary dismissal of the entire cause, the court lacks subject matter jurisdiction to enter a judgment pursuant to section 664.6. (*Sayta v. Chu, supra*, 17 Cal.App.5th at p. 966.) Accordingly, the order granting plaintiff’s motion for judgment and the judgment are void for lack of subject matter jurisdiction.

Plaintiff concedes that the trial court lacked jurisdiction to enter the judgment, but nonetheless requests that we “include in [the] remittitur instructions to the trial court to reconsider [plaintiff]’s application to vacate the dismissal and enter

judgment according to the settlement.” The record does not indicate whether the trial court granted or denied any such motion.² Nor has either party filed a notice of appeal from such a decision. “[A] court should avoid advisory opinions involving hypothetical facts (see generally *People v. Slayton* (2001) 26 Cal.4th 1076, 1084 . . .) . . . [and] it is premature to consider [plaintiff’s] argument . . .” (*Benitez v. North Coast Women’s Care Medical Group, Inc.* (2003) 106 Cal.App.4th 978, 991.) We thus express no opinion on the merits of plaintiff’s motion and decline plaintiff’s invitation to include its requested instruction in our remittitur.

² On June 6, 2019, plaintiff moved to augment the record with its request to the trial court to shorten time for hearing on plaintiff’s motion to vacate dismissal and enter a judgment *nunc pro tunc*, which appears to have been submitted on October 8, 2018. We denied the motion to augment this exhibit because it did not bear a filed-stamp. While we stated that the parties could stipulate that various items were filed-stamped by the trial court, the parties have not so stipulated. On July 26, 2019, plaintiff renewed its motion to augment the record. We grant the motion as to exhibit 1 but deny it as to the remaining exhibits. Plaintiff did not seek to augment the record with any ruling on plaintiff’s motion to vacate dismissal and enter a judgment *nunc pro tunc*.

IV. DISPOSITION

The order granting Linco Custom Picture Framing, Inc.'s motion for judgment and the judgment are reversed. The cause is remanded to the superior court with directions to vacate the order and judgment. The parties are to bear their own costs on appeal.

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KIM, J.

We concur:

RUBIN, P. J.

BAKER, J.